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October 10, 2016

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Del Clark, Safety Manager **Schmidbauer Lumber Inc.** **1099 West Waterfront Drive** **Eureka, CA 95501**	**Paul A. Brisso** **Agent for Service of Process for** **Schmidbauer Lumber Inc.** **814 Seventh St.** **Eureka, CA 95501**
Schmidbauer Building Supply, LLC **P.O. Box 3293** **Eureka, CA 95502**	**Kay E. Johnson** **Agent for Service of Process for** **Schmidbauer Building Supply, LLC** **1061 Samoa Blvd.** **Arcata, CA 95521**
FKS Investment Company, LLC **Foot of Railroad Avenue** **Eureka, CA 95501**	**George Schmidbauer** **Agent for Service of Process for** **FKS Investment Co., LLC** **Foot of Railroad Avenue** **Eureka, CA 95501**

Re: Notice of Clean Water Act Violations and Intent to File Suit

Dear Sirs and Madam,

This firm represents the Ecological Rights Foundation ("ERF") with regard to violations of the Clean Water Act ("CWA" or "the Act") occurring at the Schmidbauer Lumber Company (hereinafter collectively "You," "Your" or "Schmidbauer Lumber") facility located at 1099 West Waterfront Drive, Eureka, California ("the facility"). The Waste Discharger Identification number ("WDID") for the Facility is 1121001233. This letter is being sent to You as the responsible owners, officers, and/or operators of the Facility. It addresses Your unlawful discharge of pollutants from the Facility into Humboldt Bay.

CWA § 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of his or her intent to file suit. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, and the State in which the violations occur. This letter addresses Your violations of the substantive and procedural requirements of the CWA and National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, adopted by California State Water Resources Control Board ("SWRCB") Water Quality Order No. 2014-0057-

DWQ ("2015 Industrial Storm Water Permit" or " WQO-2014-0057-DWQ"), which became effective July 1, 2015, and Your violations of the previous version of the Industrial Stormwater Permit, Water Quality Order No. 97-03-DWQ ("1997 Industrial Storm Water Permit" or "WQO-97-03-DWQ"). In its April 1, 2014 Order, the SWRCB ordered that "except for Order 97-03-DWQ's requirement to submit annual reports by July 1, 2015" and "*except for enforcement purposes,*" WQO-2014-0057-DWQ supersedes WQO-97-03-DWQ.

Schmidbauer Lumber, Inc. submitted a Notice of Intent to comply with the terms of the Industrial Storm Water Permit, WQO-2014-0057-DWQ, on January 23, 2015, and had previously submitted a Notice of Intent to comply with the terms of earlier versions of the State Board's general industrial stormwater permit. On March 26, 1992, Schmidbauer completed a Notice of Intent for Industrial Storm Water General Permit No. CAS000001 for storm water discharges, and on June 6, 1997, Schmidbauer completed a new Notice of Intent for Industrial Storm Water General Permit WQO-97-030-DWQ. Thus, at all relevant times, You have been a permittee subject to the Industrial Stormwater Permit's requirements. Other than coverage under the Industrial Stormwater Permit, Your Facility lacks NPDES permit authorization for any wastewater discharges.

ERF is a non-profit public benefit corporation organized under the laws of California, with its main office in Garberville, California. ERF's purpose is to educate the public about environmental practices which cause harm to human health, the environment and other natural resources, and to seek redress from those harms through litigation or alternative dispute resolution. ERF represents citizens in protecting California's waterways from pollution and securing the multitude of benefits that flow from clean, vibrant waters: safe drinking water, abundant and diverse wildlife populations, healthy recreational opportunities, and economic prosperity from commercial fishing, tourism, and other commercial activities that depend on clean water. To further its goals, ERF actively seeks federal and state agency implementation of state and federal water quality laws, including the CWA, and as necessary, directly initiates enforcement actions on behalf of itself and its members. ERF's members use and enjoy the waters and species impacted by Your Facility for various recreational, educational, aesthetic and spiritual purposes. These natural resources include the Humboldt Bay and the species that reside, breed, and forage in and around those waters.

On information and belief, Schmidbauer Lumber, Inc., Schmidbauer Building Supply LLC, FKS Investments Company, LLC and George A. Schmidbauer are the owner, corporate parent of, or otherwise exercise control over Schmidbauer Lumber. Schmidbauer Lumber, Schmidbauer Building Supply LLC, and FKS Investments Company, LLC are actively registered with the California Secretary of State.

This Notice of Violation and Intent to File Suit provides notice of the violations that have occurred and which continue to occur at the Schmidbauer Lumber Facility. ERF's investigations have uncovered significant violations of the 1997 and 2015 Industrial Stormwater Permits and the CWA at Your Facility. Consequently, You are hereby notified that, after the expiration of sixty (60) days from the date of this Notice, ERF intends to file

suit in federal court against You under CWA § 505(a), 33 U.S.C. §1365(a). The violations of the 1997 and 2015 Industrial Stormwater Permits and the CWA are described in further detail below.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

The violations alleged in this notice letter have occurred and continue to occur at Your Facility located at 1099 West Waterfront Drive, Eureka, California. Schmidbauer's Notices of Intent to be covered by the 1997 and 2015 Industrial Stormwater Permits, and its Storm Water Pollution Prevention Plan ("SWPPP") identify the Humboldt Bay as the receiving water for its stormwater discharges from the Facility. The Humboldt Bay is a water of the United States. You have committed and continue to commit violations of the substantive and procedural requirements of the 1997 and 2015 Industrial Stormwater Permits and the CWA at the Facility.

A. The Schmidbauer Lumber Facility

The Schmidbauer Lumber facility is approximately 25 aces in size and is entirely paved except for approximately two (2) acres on the south edge of the property line and several smaller areas around the site. Storm water runoff makes up virtually all of the runoff from the facility. The Site is located adjacent to Humboldt Bay, and overlies deposits of fill, bay muds, and sands. Shallow groundwaters underlie the site less than three feet below the ground surface.

Hammond Lumber Company developed the site of the Schmidbauer Facility around 1948 and operated the mill until 1960. Norris Redwood took over and operated the mill until 1967. Georgia Pacific operated the Site from 1968 to 1972, when it was sold to Schmidbauer. Schmidbauer began treating lumber with Noxtane, a wood treatment chemical, shortly after the sale.[1] Noxtane contains pentachlorophenol ("PCP") and tetrachlorophenol ("TCP"), and was used at the site until 1983. Until they were banned by the U.S. Environmental Protection Agency in the late 1980's due to their extreme toxicity, chlorophenolic wood treatment chemicals were widely used at lumber mills. The chemicals themselves, pentachlorophenol and tetrachlorophenol, are known carcinogens, but even more problematic is the fact that chlorophenolic wood treatment products are invariably contaminated with polychlorinated dibenzo-p-dioxins ("dioxins") and polychlorinated dibenzofurans ("furans"). Dioxins and furans are widely recognized by the U.S. Environmental Protection Agency, the World Health Organization, and other governmental and nongovernmental organizations as among the most potent toxins known to humankind. Even in minute quantities, dioxins can cause cancer, mutations, developmental abnormalities, or fatalities in exposed human, animal, and plant populations. Dioxins and furans are also extremely persistent in the environment, with some congeners having half-lives measured in decades. Soils contaminated with dioxins and furans are still present at the

1 Cleanup and Abatement Order No. R1-2005-0040 for Schmidbauer Lumber, May 12, 2005, at 3, *available at* http://www.swrcb.ca.gov/northcoast/board_decisions/adopted_orders/pdf/051605-schmdcao2.pdf.

sites of many historic lumber mills throughout the nation, where sloppy use and improper disposal practices led to widespread contamination of soils, sediments, and groundwater. Such contaminated soils and sediments pose significant risks to human health and the environment as they are widely dispersed into the environment by rainwater runoff, wind, and vehicle traffic.

Discharges of stormwater and non-stormwater from lumber facilities such as Schmidbauer Lumber are of significant concern because the industrial activities associated with these sites make various pollutants particularly accessible to stormwater. The Schmidbauer facility currently has 18 hazardous materials storage areas. Specifically, the Schmidbauer Lumber Facility stores thousands of gallons of propane, oil, diesel fuel, gasoline, grease, coolant, boiler chemicals, compressed gases such as acetylene, nitrogen, argon, carbon dioxide and oxygen, and sapstain control chemicals such as propiconazole.

The Facility is an active lumber mill, and according to the current Stormwater Pollution Prevention Plan ("SWPPP"), facility operations include log and lumber storage, debarking, bucking, milling, planing, applying anti-sapstain chemicals, wood byproduct recovery, lumber shipping, sawmill, vehicle, and equipment fueling, and maintenance. The facility has a boiler and dry wood waste (referred to as "hog fuel") is burned in the boiler to generate steam for heating lumber frying kilns.

The large number of vehicles and amount of lumber entering and leaving the Facility track oil, grease, wood treatment chemicals, lumber debris, and other pollutants off-site and onto roads where rainfall washes these pollutants into the storm drain system or directly into waters of the United States.

Motor oil detected in the Kiln Ditch in 2015 was attributed to frequent passage of forklifts and loaders used for debarking in the area, one of which had an oil leak.[2] According to the facility's 2010 Stormwater Monitoring Plan – which discussed that the same problem plagued the facility as far back as 2010 – loaders drive back and forth up to 18 hours a day at the Facility. In 2013, exceedances of Total Suspended Solids ("TSS") in the Kiln Ditch were also attributed to heavy traffic throughout the area.[3] Correspondence from 2014 also estimated that the exceedance of oil levels in samples from the Kiln Ditch was likely attributable to a chip or shavings truck with a leak.[4]

Storm water also comes into contact with logs and lumber stored alongside ditches. This is problematic because lumber is treated with chemicals such as Propiconazole, which was detected in the West Ditch.[5] Propiconazole is a fungicide, antimicrobial pesticide, and

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2 Letter from Del Clark, Environmental Health/Safety Manager at Schmidbauer Lumber dated February 23, 2015 discussing stormwater sample result exceedances for Total Suspended Solids, Chemical Oxygen Demand, Zinc, motor oil, and Propiconazole.
3 Letter from Tom Stern dated March 28, 2013 regarding stormwater sample result exceedances.
4 Letter from Tom Stern dated January 2, 2014 regarding stormwater sample result exceedances.
5 Letter from Del Clark, Environmental Health/Safety Manager at Schmidbauer Lumber, dated February 23,

materials preservative.[6] Propiconazole is considered highly toxic to freshwater fish and estuarine/marine invertebrates, moderately toxic to estuarine/marine fish, and slightly toxic to mammals and freshwater invertebrates.[7] A 2013 risk assessment completed by the EPA concluded that increased use of propiconazole as a fungicide carried the potential for acute risk to listed estuarine/marine invertebrates.[8] The EPA-approved label for propiconazole technical products states:

> This product is toxic to fish. Do not apply directly to water, to areas where surface water is present, or to intertidal areas below the mean high Water mark. Do not contaminate water by cleaning of equipment or disposal of wastes. Do not discharge effluent containing this product into lakes, streams, ponds, estuaries, oceans, or other waters, unless in accordance with the requirements of a National Pollutant Discharge Elimination System (NPDES) permit and the permitting authority has been notified in writing prior to discharge. Do not discharge effluent containing this product to sewer systems without previously notifying the local sewage, treatment plant authority. For guidance, contact your State Water Board or Regional Office of the EPA. [9]

Disposal of waste and handling of spills at the Facility present their own environmental hazards. According to the Facility's 2012-2013 SWPPP, small local spills are absorbed using sawdust that is mixed with hog fuel and then incinerated in a waste-powered boiler. Boiler ash is known to contain concentrations of dioxins, furans, polynuclear aromatic hydrocarbons ("PAHs") and metals. Lumber facilities typically generate two distinct types of ash, which are generally referred to as fly ash and bottom ash. Fly ash is the lightest-weight component. It rises with the flue gases and is captured by a boiler or incinerator's air contaminant control equipment. Bottom ash, the material that falls to the bottom of the burner unit, consists of rocks, gravels and other non-combustible materials. Data indicates that of the two materials, fly ash generally has higher concentrations of metals and dioxins. Wood ash is considered solid waste and is subject to solid waste management requirements under both the Health and Safety Code and CalRecycle regulations. In accordance with those regulations, wood ash may have practical applications for re-use given certain criteria and management practices. However, if improperly managed, ash poses a threat to water quality.

Your annual reports, filed with the California's North Coast Regional Water Quality Control Board ("Regional Board"), indicate that discharges of stormwater from the Facility are

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2015; *see also* data in Attachment 1 for 2/2/15 – West Ditch – Propiconazole.
6 *Reregistration Eligibility Decision (RED) for Propiconazole*, U.S. EPA at 1 (July 18, 2006) *available at* https://archive.epa.gov/pesticides/reregistration/web/pdf/propiconazole_red.pdf.
7 *Propiconazole: Technical Screen, Drinking Water Assessment, and Ecological Risk Assessment for New Use on Rapeseed subgroup*, U.S. EPA at 5-6 (Mar. 19, 2013) *available at* https://www.regulations.gov/ document?D=EPA-HQ-OPP-2013-0051-0009.
8 *Id.* at 2.
9 *Pesticide Product Label: Propiconazole Technical*, U.S. EPA at 3 (Apr. 9, 2014) *available at* https://www3.epa.gov/pesticides/chem_search/ppls/000100-00618-20140409.pdf.

consistently contaminated with higher levels of pollutants than permissible under the 1997 and 2015 Industrial Stormwater Permits and You have therefore failed to develop and/or implement an adequate Stormwater Pollution Prevention Plan ("SWPPP"), Monitoring and Reporting Program ("MRP"), or best management practices ("BMPs") as required by the Industrial Stormwater Permit.

B. The Humboldt Bay

Stormwater discharged from Your Facility flows into Humboldt Bay and seeps into the groundwater underlying the facility. The CWA requires that water bodies like the Humboldt Bay meet water quality objectives, which protect specific "beneficial uses." The beneficial uses of the area groundwater of the Facility include: domestic water supply, agricultural supply, and industrial supply.[10] The beneficial uses of Humboldt Bay include: saline water habitat, wildlife habitat, preservation of rare and endangered species, marine habitat, fish migration, fish spawning area, shellfish harvesting, industrial service supply, navigation, water contact recreation, non-contact recreation, and ocean commercial and sport fishing.[11] The five major fisheries based out of Humboldt Bay are groundfish, salmon, shrimp, crab, and albacore.[12] Each year fewer and fewer adult fish have returned from the sea to spawn as a result of habitat damage from logging, road building, grazing, mining, over-fishing, and unsuccessful hatcheries.[13]

Humboldt Bay is one of California's largest coastal estuaries, second only to San Francisco Bay in size. The Humboldt Bay Watershed provides habitat to a wide array of flora and fauna, including a number of species protected by the Federal Endangered Species Act ("ESA"). Among these species are the western snowy plover, marbled murrelet, bald eagle, brown pelican, short-tailed albatross, northern spotted owl, sei whale, blue whale, fin whale, steller sea lion, humpback whale, sperm whale, tidewater goby, Southern Oregon/Northern California coho salmon, California coastal chinook salmon, Northern California steelhead, loggerhead turtle, green turtle, leatherback turtle, olive ridley sea turtle, Menzies' wallflower, beach layia, western lily, and kneeland prairie penny-cress.[14] Humboldt Bay serves as a refuge, nursery, and habitat for over 120 species of fish and 102 species of Polychaeta as well as mollusks, birds, and plants.[15] Humboldt Bay National Wildlife Refuge was established in 1971 in recognition of the area's special importance to fish and wildlife.[16]

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10 Cleanup and Abatement Order No. R1-2005-0040 for Schmidbauer Lumber, May 12, 2015, at 3, *available at* http://www.swrcb.ca.gov/northcoast/board_decisions/adopted_orders/pdf/051605-schmdcao2.pdf.
11 *Id.*
12 *Humboldt County General Plan Update* (2013) at 2-4, *available at*: https://humboldtgov.org/DocumentCenter/Home/View/1367.
13 *Id.*
14 *Listed/Proposed Threatened and Endangered Species for Humboldt County* (Apr. 6, 2007), http://www.ci.eureka.ca.gov/civica/filebank/blobdload.asp?BlobID=5065
15 *Humboldt Bay Species Gallery*, Humboldt Bay Harbor, Recreation, and Conservation District (2015), http://humboldtbay.org/humboldt-bay-species-galleries.
16 *Humboldt Bay National Wildlife Refuge*, https://www.fws.gov/refuge/humboldt_bay/.

It is unlawful to discharge pollutants to waters of the United States, such as the Humboldt Bay, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. In 1997 and 2015, You submitted Notices of Intent ("1997 NOI" and "2015 NOI," respectively, and collectively "the NOIs") to be authorized to discharge stormwater from Your Facility by the 1997 and 2015 Industrial Stormwater Permits and thus at all relevant times have been a permittee subject to the Industrial Stormwater Permits' requirements. The 1997 and 2015 Industrial Permits are NPDES permits. Other than coverage under the Industrial Stormwater Permits, Your Facility lacks NPDES permit authorization for any wastewater discharges.

As discussed below, ERF's investigations have uncovered numerous significant violations of the 1997 and 2015 Industrial Stormwater Permits and of the CWA's prohibition on the unpermitted discharge of pollutants to waters of the United States. Consequently, You are hereby placed on notice that, after the expiration of sixty (60) days from the date of this Notice of Violation and Intent To File Suit, ERF intends to file suit in federal court against You under CWA § 505(a), 33 U.S.C. § 1365(a), for violations of the CWA.

II. THE ACTIVITIES AT THE FACILITY ALLEGED TO CONSTITUTE VIOLATIONS AND THE EFFLUENT LIMITATIONS VIOLATED

You conduct numerous pollutant-generating activities at Your Facility outdoors in uncovered areas exposed to rainfall and stormwater runoff. As a result, contaminated stormwater runs off the Facility from the discharge points identified in Your Annual Reports to the State Board and Your Storm Water Pollution Prevention Plans and discharges to the Humboldt Bay. Pursuant to the 1997 and 2015 Industrial Stormwater Permits, this contaminated stormwater discharge obligates You to develop, implement, update, and revise a SWPPP that minimizes the discharge of pollutants to a level commensurate with application of the Best Available Technology Economically Achievable ("BAT") and the Best Conventional Pollutant Control Technology ("BCT"). In addition, the SWPPP and Your implementation of the SWPPP must prevent Your discharges from causing or contributing to violations of Water Quality Standards for the Humboldt Bay. You must also monitor and sample the Facility's stormwater discharges, and meet various other limitations on its stormwater discharge.

As a result of the numerous pollutant-generating activities at Your Facility, contaminated stormwater runs off Your Facility and discharges into the Humboldt Bay. As will be further described below, You have failed to develop, implement, and revise an adequate SWPPP and have discharged stormwater polluted to levels exceeding BAT and BCT levels of control and which have caused violations of Water Quality Standards. You further have failed to adequately monitor and sample Your stormwater discharges and failed to meet various other limitations on Your stormwater discharges set forth in the 1997 and 2015 Industrial Stormwater Permits. These actions all constitute violations of CWA effluent limitations.

A. Discharges in Violation of the Industrial Stormwater Permit

The CWA provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharger is in compliance with the terms of a NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Facility discharges stormwater associated with industrial activity to the Humboldt Bay, and that stormwater is contaminated with pollutants. The Facility has discharged and continues to discharge stormwater pursuant to the 1997 and 2015 Industrial Stormwater Permits, which authorize these discharges conditioned on the Facility complying with the terms of these permits. Each of these permit terms constitutes an "effluent limitation" within the meaning of CWA § 505(f), 33 U.S.C. § 1365(f). The Facility's stormwater discharges have violated various of these permit terms, thereby violating CWA effluent limitations.

1. Failure to Implement BMPs Constituting BAT/BCT

The Effluent Limitations of the 1997 and 2015 Industrial Stormwater Permits, (WQO-97-03-DWQ § B.3.; WQO-2014-0057-DWQ §§ V.A., X.H.1, X.H.2.; *see also* WQO-2014-0057-DWQ, Industrial General Permit Fact Sheet § D.1-5.), require that You implement BMPs that constitutes BAT and BCT as the means to reduce or prevent discharges of pollutants. The EPA and the State Board have published Numeric Action Level values ("NALs") set at the maximum level of pollutant loading generally expected if an industrial facility is employing BAT and BCT.[17] Attachment 1 to this Notice Letter compiles some of the self-monitoring data reported by the Facility to the Regional Board reflecting the Facility's sampling of actual stormwater discharges. As reflected in Attachment 1 to this Notice Letter, the Facility has repeatedly discharged stormwater with pollutant levels exceeding Benchmark Values and/or NALs, which establishes that the Facility has failed to employ BMPs constituting BAT and BCT: had the facility employed BMPs constituting BAT and BCT, it would not have repeatedly discharged storm water containing pollutant levels exceeding Benchmark Value and/or NALs. These discharges (and all discharges referred to in this Notice Letter) have occurred at the discharge locations identified in Your Annual Reports to the State Board. The sample results reflected in Attachment 1 are representative of the pollutant levels in the Facility's discharge of stormwater, including such discharges that You did not sample or analyze. Thus, every instance where the Facility has discharged stormwater, including instances where the Facility has discharged stormwater that it has not sampled, ERF alleges that this stormwater discharge has contained levels of pollutants comparable to the levels set forth in Attachment 1.

While you should be aware of each day that You have discharged stormwater from the Facility (as the Industrial Stormwater Permits required You to monitor such discharges),

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[17] The NALs can be found in Table 2 of the 2015 Industrial Storm Water Permit : http://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml#igp_2014-0057-dwq These values were previously referred to as 'Benchmark Values' under the 1997 Industrial Storm Water Permit and 2008 EPA multi-sector industrial permit.

ERF alleges and puts You on notice that You have discharged stormwater containing pollutants to Humboldt Bay during at least every significant local rain event over 0.1 inches for at least the last five years. Significant local rain events are reflected in the rain gauge data available at http://www.ncdc.noaa.gov/data-access. Attached as Attachment 2 is a table reflecting the rainfall data for the past five years, as reported to the Woodley Island, Eureka California NOAA monitoring station, the closest monitoring station available on the NOAA website.

ERF alleges that Your unlawful discharges of stormwater from the Facility with levels of pollutants exceeding BAT and BCT levels of control continue to occur presently during all significant rain events. Each discharge of stormwater from Your Facility after the effective date of the BAT and BCT requirements in the current and past Industrial Stormwater Permits constitutes a separate violation of the Industrial Stormwater Permit and the CWA. WQO-97-03-DWQ § B.3.; WQO-2014-0057-DWQ §§ V.A., X.H.1, X.H.2.You are subject to civil penalties for violations of the Industrial Stormwater Permit and the CWA within the past five (5) years.

Your continued discharges of stormwater containing levels of pollutants above Benchmark Values and BAT- and BCT-based levels of control necessarily means that You have not developed and/or implemented sufficient BMPs at the Facility to prevent stormwater flows from coming into contact with the sources of contaminants at the Facility or otherwise to control the discharge of pollutants from the Facility. Accordingly, You have not developed and/or implemented adequate SWPPPs or MRPs at the Facility

2. Discharges that Have Violated Water Quality Standards and Impaired Receiving Waters

The Discharge Prohibitions of the 1997 and 2015 Industrial Stormwater Permits prohibit stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. WQO-97-03-DWQ § A.2; WQO-2014-0057-DWQ § III.C. The Receiving Water Limitations of the 1997 and 2015 Industrial Stormwater Permits also prohibit stormwater discharges that cause or contribute to an exceedance of any applicable Water Quality Standards in any affected receiving water. WQO-97-03-DWQ § C.2; WQO-2014-0057-DWQ § VI.A. Applicable Water Quality Standards are set forth in the Water Quality Control Plan for the North Coast Region ("Basin Plan")[18] and the California Toxics Rule[19] ("CTR"). The Receiving Water Limitations of the 1997 and 2015 Industrial Stormwater Permits also prohibit stormwater discharges that adversely impact human health or the environment. WQO-97-03-DWQ § C.1; WQO-2014-0057-DWQ § VI.B. The Receiving Water Limitations or the Discharge Prohibitions of the 1997 and 2015 Industrial Stormwater

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18 The Basin Plan is published by the California North Coast Regional Water Quality Control Board at http://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan.shtml.

19 The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31682.

Permits also prohibit stormwater discharges that contain pollutants in quantities that threatened to cause pollution or a public nuisance. WQO-97-03-DWQ § A.2; WQO-2014-0057-DWQ § VI.C.

The Basin Plan, Section 3, establishes the following relevant Water Quality Standards (also known as Water Quality Objectives) for the Humboldt Bay:

1. Controllable water quality shall conform to the water quality objectives contained therein.

2. Dissolved oxygen levels shall be a minimum of 6.0 mg/L [6,000 ug/L].

3. The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.

4. Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.

5. Turbidity shall not be increased more than 20 percent above naturally occurring background levels.

6. Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.

7. Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.

8. Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

9. Changes in normal ambient pH levels shall not exceed 0.2 units in waters with designated marine (MAR) or saline (SAL) beneficial uses.

10. All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life.

11. No individual pesticide or combination of pesticides shall be present in concentrations that adversely affect beneficial uses. There shall be no bioaccumulation of pesticide concentrations found in bottom sediments or aquatic life.

ERF alleges and puts You on notice that Your discharges of stormwater from the Facility have caused or contributed to an exceedance of the above-listed Water Quality Standards. These discharges (and all discharges referred to in this Notice Letter) have occurred at each of the discharge locations identified in Your Annual Reports to the State Board and SWPPP. Attachment 1 to this Notice Letter compiles some of the self-monitoring data reported by the Facility to the Regional Board reflecting the Facility's sampling of stormwater discharges. The sample results reflected in Attachment 1 are representative of the pollutant levels in the Facility's discharge of stormwater, including such discharges that You did not sample or analyze. Thus, every instance when the Facility has discharged stormwater, including instances when the Facility has discharged stormwater that it has not sampled, this stormwater discharge has contained levels of pollutants comparable to the levels set forth in Attachment 1. As reflected in Attachment 1, Your Facility's stormwater discharges to the Humboldt Bay have consistently contained elevated levels of the following pollutants: TSS, Zinc, Total Organic Carbon ("TOC"), Chemical Oxygen Demand ("COD"), and Specific Conductance ("SC"). Arsenic, chromium, and copper have also been detected in your stormwater discharges and you have exceeded the EPA benchmark for copper on at least one occasion. Significant amounts of Propiconazole as well as tannins and lignins have also been detected in discharges.

You have not consistently tested for Oil and Grease as required by the 1997 and 2015 permits in Your stormwater discharges, despite having admitted to a longstanding problem containing Oil and Grease levels in stormwater discharges at the Facility in Your correspondence with the State Board. Instead, you have tested for other total hydrocarbon parameters, referred to variously in Your sampling data as "motor oil", "TPHC", "TPHC as motor oil", and/or "TPHC as diesel."

The excessive TSS in Your Facility's stormwater discharges has caused or contributed and is continuing to cause or contribute to the Humboldt Bay not meeting the Water Quality Standards Nos. 3, 5, and 8 set forth in the Basin Plan. Furthermore, Your Facility's discharge of stormwater containing suspended and settleable toxic metals and other materials has contributed to the deposition and/or dispersal of materials that interfere with beneficial uses of the Humboldt Bay and a detrimental increase in concentrations of toxic substances found in bottom sediments or aquatic life due to bioaccumulation, and thus has caused or contributed and is continuing to cause or contribute to the Humboldt Bay not meeting the Water Quality Standards Nos. 3 through 11 set forth in the Basin Plan. Your Facility's discharge of COD has caused or contributed and is continuing to cause or contribute to the Humboldt Bay not meeting applicable Water Quality Standards No. 2 in the Basin Plan for dissolved oxygen. Your Facility's stormwater discharges containing excessive sediment, TSS, metals, and COD have further caused pollution, contamination, or nuisance and adverse effects on the environment in violation of the following Receiving Water Limitations and Discharge Prohibitions of the 1997 and 2015 Industrial Stormwater Permits: WQO-97-03-DWQ § A.2 & C.1; WQO-2014-0057-DWQ § III.C., VI.B. & C.

ERF alleges and puts You on notice that You have been in violation of the Receiving Water Limitations and Discharge Prohibitions of the Industrial Stormwater Permit for all discharges in at least the past five years. Each day prior to July 1, 2015 that You discharged stormwater from the Facility, You were in violation of the 1997 Industrial Stormwater Permit's Receiving Water Limitations and Discharge Prohibitions set forth at WQO-97-03-DWQ §§ A.2, C.1, & C.2 by causing or contributing to exceedances of water quality standards and causing pollution problems as described above. ERF additionally alleges and puts You on notice that each day after July 1, 2015 that You discharged stormwater from the Facility, You were in violation of the 2015 Industrial Stormwater Permit's Receiving Water Limitations set forth at WQO-2014-0057-DWQ §§, VI.A., B. & C by causing or contributing to exceedances of water quality standards and causing pollution problems as described above.

While You should be aware of each day that You have discharged stormwater from the Facility (as the Industrial Stormwater Permits require You to monitor such discharges), ERF alleges and puts You on notice that since the effective date of the 1997 Industrial Stormwater Permit (April 17, 1997), You have discharged stormwater from the Facility during at least every significant local rain event over 0.1 inches that has caused or contributed to Water Quality Standards not being met in the Humboldt Bay (or for water quality standards established by the California Toxics Rule, since the May 24, 2000 effective date of the California Toxics Rule). Significant local rain events for the last five years are reflected in Attachment 2.

Unlawful discharges from the Facility continue to occur presently during all significant rain events. Each discharge from Your Facility that causes or contributes to an exceedance of an applicable Water Quality Standard or otherwise violates 2015 Industrial Stormwater Permit's Receiving Water Limitations and Discharge Prohibitions and constitutes a separate violation of the Industrial Stormwater Permits and the CWA. WQO-2014-0057-DWQ §§ VI.A. B., C. The stormwater discharges and practices that are causing and contributing to these violations are ongoing. You are subject to penalties for violations of the Industrial Stormwater Permits and the CWA within the past five (5) years. ERF hereby places You on notice that it intends to bring claims against You for violations of the above provisions of the 1997 and 2015 Industrial Stormwater Permits.

3. Exceedances of Numeric Action Levels and Failure to Implement Exceedance Response Actions

The 2015 Industrial Stormwater Permit incorporates a multiple objective performance measurement system that includes NALs, new comprehensive training requirements, Level 1 Exceedance Response Actions ("ERA Reports"), Level 2 ERA Technical Reports, and Level 2 ERA Action Plans. The 2015 Industrial Stormwater Permit contains two types of NALs: (1) an annual NAL and (2) an instantaneous maximum NAL. WQO-2014-0057-DWQ § XII.A.1. & 2. Dischargers exceed an annual NAL when the average of all their stormwater discharge sampling results within a reporting year for a single parameter (except

pH) exceeds the applicable annual NAL.

Dischargers exceed an instantaneous maximum NAL when two or more analytical results from their stormwater discharge sampling results for any parameter within a reporting year exceed the applicable instantaneous maximum NAL value. Instantaneous maximum NALs are only applicable to TSS, pH, and Oil and Grease. If stormwater discharges exceed these NALs, the 2015 Industrial Stormwater Permit deems dischargers to be in "Level 1 status" and requires such dischargers to complete a Level 1 status evaluation by October 1, 2016 (and annually thereafter so long as their stormwater discharges continue to exceed NALs) of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s). WQO-2014-0057-DWQ § XII.C.1. Additionally, such dischargers must submit a Level 1 ERA Report to the State Board by January 1, 2017 (and annually thereafter so long as their stormwater discharges continue to exceed NALs and until they have completed ERAs) summarizing their Level 1 status evaluation and describing their revisions to their SWPPPs and any additional BMPs they are implementing. WQO-2014-0057-DWQ § XII.C.2.

If a discharger further exceeds NALs while in Level 1 status, then the 2015 Industrial Stormwater Permit assigns the discharger "Level 2 status." WQO-2014-0057-DWQ § XII.D. The 2015 Industrial Stormwater Permit requires dischargers in Level 2 status to develop and implement a Level 2 action plan by January 1st following the discharger acquiring Level 2 status setting forth the measures the discharger will implement to avoid future NAL exceedances. WQO-2014-0057-DWQ § XII.D.1. By the following January 1st, the dischargers must further submit a Level 2 technical report analyzing the BMPs implemented and whether these BMPs will avoid NAL exceedances and whether additional BMPs are needed to avoid BMP exceedances. WQO-2014-0057-DWQ § XII.D.2.

As detailed in Attachment 1, You discharged stormwater in the 2015-2016 wet season with pollutant levels that exceed the annual NALs for TSS and COD. On information and belief, You have not implemented the required Level 1 status evaluation or Level 1 ERA Report. ERF further hereby places You on notice that if Your Facility's discharges further exceed NALs while the Facility is in Level 1 status and You fail to develop a Level 2 action plan and/or a Level 2 technical report by the deadlines set forth in the 2015 Industrial Stormwater Permit, You will be in further violation of the 2015 Industrial Stormwater Permit and ERF will seek to pursue CWA citizen suit claims for these additional violations.

4. Violations of Industrial Stormwater Permit Conditions Related to Development and/or Implementation of an Adequate Stormwater Pollution Prevention Plan ("SWPPP")

The 1997 Industrial Permit required dischargers to develop and implement an adequate SWPPP and make all necessary revisions to existing SWPPPs promptly, and in any case no later than August 1, 1997. WQO-97-03-DWQ §§ A.1, C.1. The 2015 Industrial Stormwater Permit contains essentially identical SWPPP requirements, but with the inclusion of a new

set of minimum BMPs and additional Advanced BMPs. WQO-2014-0057-DWQ § X.A-I. The 2015 Industrial Stormwater Permit requires dischargers to implement their revised SWPPP by July 1, 2015 or upon commencement of industrial activity. WQO-2014-0057-DWQ, § X.B.

Both the 1997 and 2015 Industrial Stormwater Permits require dischargers to develop and implement a site-specific SWPPP for each covered industrial facility that contains the following elements: 1. Facility Name and Contact Information; 2. Site Map; 3. List of Industrial Materials; 4. Description of Potential Pollution Sources; 5. Assessment of Potential Pollutant Sources; 6. Minimum BMPs; 7. Advanced BMPs, if applicable; 8. Monitoring Implementation Plan; 9. Annual Comprehensive Facility Compliance Evaluation (Annual Evaluation); and, 10. Date that SWPPP was initially Prepared and the Date of Each SWPPP Amendment, if Applicable. WQO-97-03-DWQ, § A; WQO-2014-0057-DWQ §§ X.A., X.H.1. In addition, after July 1, 2015, the SWPPP must identify and describe any advanced BMPs implemented to reduce or prevent pollutants in industrial stormwater discharges and authorized non-stormwater discharges ("NSWDs"). WQO-2014-0057-DWQ § X.H.2. The SWPPP must further identify and describe conditions or circumstances which may require future revisions to be made to the SWPPP. WQO-2014-0057-DWQ, § X.C.

As further described below, prior to July 1, 2015, Your SWPPP failed to comply with the SWPPP requirements in the 1997 Industrial Stormwater Permit and/or You failed to implement Your SWPPP. Additionally, as also further described below, Your present SWPPP fails to comply with the SWPPP requirements set forth in the 2015 Industrial Stormwater Permit and/or You have failed since July 1, 2015 to implement Your SWPPP.

a. Failure to Adequately Assess, Identify and Describe Potential Pollutant Sources.

Dischargers must ensure that a SWPPP is prepared in order to identify and evaluate all sources of pollutants that may affect the quality of industrial storm water discharges and authorized NSWDs. WQO-2014-0057-DWQ §§ X.C.1.A., X.G.2; WQO-97-03-DWQ §§ A.6, A.7. The SWPPP must describe each industrial process and the "type, characteristics, and approximate quantity of industrial materials used in or resulting from" industrial processes. WQO-2014-0057-DWQ § X.G.1.A; WQO-97-03-DWQ § A.6.a.i. Dischargers must also ensure the SWPPP describes all activities that generate a significant amount of dust, particulates, or other pollutants that may be deposited within the facility boundaries, including the locations, sources, and characteristics of the dust or particulate pollution. WQO-2014-0057-DWQ § X.G.2; WQO-97-03-DWQ § A.6. For facilities that discharge to impaired waters, the SWPPP must identify pollutants at their facility that may be causing or contributing to an exceedance of a water quality standard in the receiving waters. WQO-2014-0057-DWQ § X.G.2. Based on the potential pollutant assessment, the SWPPP must further identify any areas of the facility where the minimum BMPs will not adequately reduce or prevent pollutants. WQO-2014-0057-DWQ § X.G.2; WQO-97-03-DWQ § A.6.

As discussed above, the Facility utilized chlorophenolic wood preservatives in the past and propiconazole has recently been detected in Your stormwater discharges. In 2000 and 2005, the Regional Board issued Cleanup and Abatement Orders (R1-2000-55 and R1-2005-040) to address past and ongoing discharges of wood treatment chemicals or stain control fungicides to surface water and groundwater from Your Facility. Although the chemicals contributing to those discharges, including pentachlorophenol, are no longer used at the Facility, the Regional Board's Cleanup and Abatement Orders or the past use of wood treatment chemicals are not discussed in the Facility's current or past SWPPPs.

Additionally, according to Your correspondence with the Regional Board, there have been problems with machinery leaking oil into the path of stormwater at the Facility. However, the extensive use of heavy equipment and the path of transport activities that have the ability to track pollutants around and offsite of the Facility is not fully addressed in Your past or current SWPPPs.

Your current SWPPP and versions of Your SWPPP in effect prior to July 1, 2015 fails/failed to adequately identify, evaluate and assess all possible sources of pollutants that may be affecting the quality of the Facility's industrial stormwater discharges. Further, Your Facility discharges into Humboldt Bay, which is impaired for Dioxin Toxic Equivalents and PCBs. WQO-2014-0057-DWQ, Appendix 3. Given that wood treatment chemicals containing dioxin congeners were handled in the past and wood is currently treated with fungicides at the Facility, Your SWPPP should identify these activities as potential sources of pollutants that may become entrained in stormwater discharged from the Facility.

Therefore, You have been in continuous violation of the 1997 Industrial Stormwater Permit's requirement to describe each industrial process and the type, characteristics, and approximate quantity of industrial materials used in or resulting from industrial processes at the facility. WQO-97-03-DWQ § A.6.(a)(i). Further, on each and every day since July 1, 2015, You have been in continuous violation of the requirements in 2015 Industrial Stormwater Permit's requirements to describe each industrial process and the type, characteristics, and approximate quantity of industrial materials used in or resulting from industrial processes at the Facility. WQO-2014-0057-DWQ §§ X.G.1 and X.G.2

b. Failure to Specify and Implement Adequate Best Management Practices.

The 1997 Industrial Stormwater Permit required SWPPPs to specify BMPs designed to reduce pollutant discharge to BAT and BCT levels, including BMPs already existing and BMPs to be adopted or implemented in the future. WQO-97-03-DWQ § A.8. The 2015 Industrial Stormwater Permit requires dischargers to specify in their SWPPPs a set of minimum BMPs and to implement such BMPs. WQO-2014-0057-DWQ §§ X.H.1. & X.H.4. Such minimum BMPs include: minimizing or preventing material tracking; covering all stored industrial materials that can be readily mobilized by contact with stormwater; and

containing and covering all stored non-solid industrial materials or wastes (*e.g.*, particulates, powders . . .) that can be transported or dispersed by the wind or contact with stormwater. In addition, the 2015 Industrial Stormwater Permit requires dischargers to specify in their SWPPPs and to implement any advanced BMPs necessary to reduce or prevent discharges of pollutants in stormwater in a manner that reflects best industry practice considering technological availability and economic practicability and achievability. WQO-2014-0057-DWQ §§ X.H.2. & X.H.4. Implementation of the minimum BMPs, in combination with any necessary advanced BMPs serve as a key basis for compliance with the 2015 Industrial Stormwater Permit's Effluent Limitations, Discharge Prohibitions and Receiving Water Limitations. *See* WQO-2014-0057-DWQ §§ V.A., X.H.1 & X.H.2.

Discolored pools of water are visible around Your facility. These tea-colored puddles of contaminated water are likely caused by Your facility's vehicles tracking wood debris, waste, oil, and other substances throughout the facility and by leakage of materials hauled along conveyor belts outdoors and stored uncovered at the Facility. This is evidenced by past and present elevated levels of TSS and Oil and Grease in Your stormwater discharges as well as Your correspondence indicating frequent passage of vehicles with oil leaks and problems with cleanup of debris in and around ditches at the Facility. [20]

Sampling conducted by You has shown that Your stormwater discharges, in addition to other pollutants such as metals, contain elevated biochemical oxygen demand and chemical oxygen demand, pollutants typically associated with wood and wood waste storage. "Wood yard leaching" occurs when the by-products of chemical and biological decomposition of wood materials are carried away by water, potentially causing adverse impacts to surface waters and/or groundwater. The soluble or misable products of wood leaching include tannins, lignins, turpins, high chemical oxygen demand and biochemical oxygen demand, and in some cases "black liquor" from fermentation. Likewise, Your visual observations in Annual Reports from 2009-2015 have also consistently indicated that You have observed "dirty", "cloudy", "reddish color[ed]", and "murky" stormwater discharge. However, You have not taken steps to remedy these issues required by the 1997 and 2015 Industrial Stormwater Permits.

The continuing discharges of stormwater from Your Facility containing levels of pollutants above Benchmark Values and NALs and/or that are not commensurate with application of BAT and BCT-based levels of control necessarily means that Your SWPPPs have not specified and/or You have not developed and/or implemented BMPs at the Facility sufficient to comply with either the BMP requirements of the 1997 Stormwater Permit or the 2015 Industrial Stormwater Permit. WQO-97-03-DWQ § A.8; WQO-2014-0057-DWQ §§

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20 *See* Letter from Del Clark, Environmental Health/Safety Manager at Schmidbauer Lumber dated February 23, 2015 discussing Exceedances for TSS, COD, Zn, TPHC – motor oil – and presence of Propiconazole; *see also* 2010 Stormwater Monitoring Plan; March 28, 2013 Letter regarding Exceedances from Tom Stern; January 2, 2014 Letter from Tom Stern regarding exceedances.

X.H.1. & X.H.4. For instance, You could be implementing housekeeping BMPs at Drainage Areas 4 through 7 (as identified in Your June 2015 SWPPP) such as covering materials, moving materials or activities to existing or new permanent structures, or installing berms and other physical structures that limit the discharge of wood debris into stormwater discharges. Likewise, You have failed to implement any treatment such as an oil-water separator or appropriate filtering that would address the chemical constituents routinely found in Your discharges. Therefore, You have been in continuous violation of the 1997 Industrial Stormwater Permit BMPs requirements. WQO-97-03-DWQ § A.8. Further, on each and every day since July 1, 2015, You have been in continuous violation of the 2015 Industrial Stormwater Permit's BMPs requirements. WQO-2014-0057-DWQ §§ V.A., X.H.1 & X.H.2.

c. Failure to Develop an Adequate Site Map.

The 1997 Industrial Stormwater Permit requires SWPPPs to include a site map showing the stormwater conveyance system and areas of actual and potential pollutant contact and all areas of on-going industrial activity. WQO-97-03-DWQ §A.4. The 2015 Industrial Stormwater Permit requires dischargers to prepare a site map (or multiple maps) that includes:

a. The facility boundary, storm water drainage areas within the facility boundary, and portions of any drainage area impacted by discharges from surrounding areas. Include the flow direction of each drainage area, on-facility surface water bodies, areas of soil erosion, and location(s) of nearby water bodies (such as rivers, lakes, wetlands, etc.) or municipal storm drain inlets that may receive the facility's industrial storm water discharges and authorized NSWDs;

b. Locations of storm water collection and conveyance systems, associated discharge locations, and direction of flow. Include any sample locations if different than the identified discharge locations;

c. Locations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDs, and/or run-on;

d. Identification of all impervious areas of the facility, including paved areas, buildings, covered storage areas, or other roofed structures;

e. Locations where materials are directly exposed to precipitation and the locations where identified significant spills or leaks (§ X.G.1.d) have occurred; and

f. Areas of industrial activity subject to this General Permit. Identify all industrial storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and

material reuse areas, and other areas of industrial activity that may have potential pollutant sources. WQO-2014-0057-DWQ § X.E.

Your past and present site maps have failed to include all the information required by the 1997 and 2015 Industrial Stormwater Permits. For example, the site maps have failed to identify the locations of impervious and permeable areas, locations where materials are directly exposed to precipitation, detailed information on industrial storage areas and storage tanks, shipping and receiving areas, fueling areas, vehicle and equipment storage/maintenance areas, material handling and processing areas, waste treatment and disposal areas, dust or particulate generating areas, cleaning and material reuse areas, and other areas of industrial activity that may have potential pollutant sources. Therefore, on each and every day from April 17, 1997 to June 30, 2015, You were in continuous violation of the 1997 Industrial Stormwater Permit's site map requirements. WQO-97-03-DWQ §A.4. On each and every day since July 1, 2015, You have been in continuous violation of the 2015 Industrial Stormwater Permit's site map requirements. WQO-2014-0057-DWQ § X.E.

d. Failure to Revise SWPPP

The 1997 Industrial Stormwater Permit requires dischargers to revise a SWPPP within 90 days after a determination that the SWPPP is in violation of any requirements of the permit. WQO-97-03-DWQ § A.10.d. The 2015 Industrial Stormwater Permit requires dischargers to revise their SWPPPs whenever necessary to ensure permit compliance. WQO-2014-0057-DWQ § X.B.1. Both the 2015 and 1997 Industrial Stormwater Permits require dischargers to perform an annual comprehensive facility compliance evaluation every reporting year (July 1 to June 30) and revise their SWPPPs to reflect any changes to BMPs or other measures as shown warranted by this compliance evaluation.

You have failed to revise Your SWPPP as required to address and eliminate the inadequacies in your SWPPP described in the preceding sections. Further, You have failed to perform an adequate annual comprehensive facility compliance evaluation in the reporting year that ended on June 30, 2016. Therefore, on each and every day from April 17, 1997 to June 30, 2015, You were in continuous violation of the SWPPP revision requirement in the 1997 Industrial Stormwater Permit. WQO-97-03-DWQ § A.10.d. On each and every day since July 1, 2015, You have been in continuous violation of the SWPPP revision requirement in the 2015 Industrial Stormwater Permit. WQO-2014-0057-DWQ §§ X.B, XV.

5. Failure to Develop and/or Implement an Adequate Monitoring and Reporting Program and Perform Annual Comprehensive Site Compliance Evaluations as Required by the Industrial Stormwater Permit

The Monitoring and Reporting Program ("MRP") Requirements of the 1997 and 2015 Industrial Stormwater Permits require dischargers to develop and implement a facility-specific monitoring program. WQO-97-03-DWQ §§ B.1, E.3; WQO-2014-0057-DWQ § XI.

The monitoring data is used to determine whether effluent and receiving water limitations are being met; to determine the presence of pollutants in storm water that may trigger the need for additional BMPs and SWPPP revisions, and to determine the effectiveness of BMPs in reducing or preventing pollutants in discharges. Dischargers are required to evaluate their facilities and analyze storm water samples for facility-specific parameters, as well as enumerated "indicator parameters."

All dischargers must submit a certified Annual Report documenting monitoring activity by July 15 each year. WQO-97-03-DWQ § B.14; WQO-2014-0057-DWQ § XVI. In addition, dischargers are required to certify, based on annual site inspection, that their permitted facilities are in compliance with the Permit and to report any noncompliance with its terms. WQO-97-03-DWQ §§ C.9, C.10; WQO-2014-0057-DWQ § XVI.B. As described below, however, You have not adopted or have not fully implemented an adequate MRP, have failed to provide complete and accurate Annual Reports, and have failed to provide accurate reporting of noncompliance with the terms of the 1997 and 2015 Industrial Stormwater Permits.

The 1997 and 2015 Industrial Stormwater Permits require that Your MRP provide for visual monitoring and recording of stormwater discharge from one rainfall event per month during the October 1 to May 30 wet season. WQO-2014-0057-DWQ § XI.A.1, A.2; WQO-97-03-DWQ §§ B.3, B.4, and B.7. (visual observation of stored or contained stormwater must be made during release).

The 1997 Industrial Stormwater Permit required that You to collect and sample storm water samples during the first storm storm event of the wet season and at least one other storm event in the wet season. WQO-97-03-DWQ § B.5(a). Facility operators that did not collect samples from the first storm event of the wet season were required to explain in the Annual Report why the first storm event was not sampled. *Id.* The 2015 Industrial Stormwater Permit now requires dischargers to collect and analyze storm water samples from two (2) qualifying storm events ("QSEs")[21] within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30). WQO-2014-0057-DWQ § XI.B.1.2.

The 1997 Industrial Stormwater Permit required that Your MRP provide for analysis of stormwater samples for TSS, pH, specific conductance, and total organic carbon ("TOC") or Oil and Grease. WQO-97-03-DWQ § B.5.c.i. Similarly, the 2015 Industrial Stormwater Permit requires that Your MRP provide for analysis of stormwater samples for TSS, pH, and Oil and Grease. WQO-2014-0057-DWQ § XI.B.6. In addition, the 1997 and 2015 Industrial Stormwater Permits required that Your MRP provide for analysis of stormwater samples for the other analytical parameters listed either in the 1997 Industrial Stormwater Permit under Table D or set out in the 2015 Industrial Stormwater Permit under Table 1.

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21 A Qualifying Storm Event (QSE) is a precipitation event that produces a discharge for at least one drainage area and is preceded by 48 hours with no discharge from any drainage area.

For Your SIC code 2421, Sawmills and Planing Mills, General, this includes COD and Zn and for the SIC code 2491,Wood Preserving, that should be applicable to your Facility given its use of wood preserving chemicals and retail sale of fencing and other wood products, arsenic and copper. WQO-2014-0057-DWQ § XI.B.6, Table 1; WQO-97-03-DWQ § B.5.c.

However, in addition to the Table D parameters, the 1997 Industrial Stormwater Permits required that Your MRP provide for analysis of toxic chemicals and other pollutants that are likely to be present in Your stormwater discharges. WQO-97-03-DWQ § B.5.c. Similarly, the 2015 Industrial Stormwater Permit § XI.B.6 requires You to sample for additional parameters that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment (§ X.G.2) which includes "pollutants likely to be present in industrial storm water discharges and authorized NSWDs" (§ X.G.2.a).

The 2015 Industrial Permit also requires dischargers to monitor additional parameters if the discharge(s) from its facility contributes pollutants to receiving waters that are listed as impaired for those pollutants (CWA § 303(d) listings). Thus, if a Discharger discharges to a water body that is listed as impaired for a given parameter, and the facility has the potential sources of that parameter, the Discharger must add copper to the list of parameters to monitor in its storm water discharge. WQO-2014-0057-DWQ § X.G.2.a.ix

Your current MRP is inadequate because it fails to consistently monitor for pollutants known to or likely to occur in stormwater discharges. For example, in the 2015-2106 wet season You failed to analyze Your stormwater discharges for chromium, arsenic, and copper despite the fact that all of these pollutants had consistently been found in previous years' samples. You have also consistently failed to test for Oil and Grease, propiconazole, and other pollutants You knew or should have known to be present. You also failed to take four samples at each location during the 2015-2016 wet season and failed to take two samples as required during previous years.

Furthermore, Your current MRP fails to monitor for other pollutants likely to be present based on the historical industrial activities performed at Your Facility. Based on the former industrial uses at the site and general knowledge in the industry, dioxins, furans, PAHs, and other metals are likely to be present in Your stormwater discharges, as treated wood and wood pulp is stored uncovered and outdoors, and wind, rain, trucks, and rolling stock spread runoff from treated wood and wood pulp throughout the Facility into drainage pathways and onto public roads. Your 2015 SWPPP acknowledges that stormwater may come into contact with boiler ash particulate matter and yet, You do not test for those constituents. Given the consistently high levels of suspended solids found in Your stormwater and activities described in Your SWPPP, Your discharges likely to contain wood pulp and its contaminants dioxins, furans, PAHs, and metals. The likelihood of dioxins and furans being present in the Facility's discharges is increased by the fact that from 1972 until 1983, You employed Noxtane, a chlorophenolic wood preservative, at the Facility.[22] Thus, Your MRP

22 Cleanup and Abatement Order No. R1-2005-0040 for Schmidbauer Lumber, May 12, 2005, at 3, *available at* http://www.swrcb.ca.gov/northcoast/board_decisions/adopted_orders/pdf/051605-schmdcao2.pdf.

is inadequate because it fails to provide for analysis of dioxins, furans, pentachlorophenol, tetrachlorophenol, hexachlorobenzene, PAHs and metals (including arsenic, barium, chromium, copper, lead, nickel, and vanadium) in the Facility's stormwater discharges.

As discussed above, You have not developed and implemented an adequate MRP. Therefore, on each and every day from April 17, 1997 to June 30, 2015, You were in continuous violation of the 1997 Industrial Stormwater Permit's requirements to develop and implement an adequate MRP. WQO-97-03-DWQ §§ B.1, E.3. Between March 26, 1992 and April 17, 1997, You were in continuous violation of the same requirement in the 1991/1992 Industrial Stormwater Permit. Further, on each and every day since July 1, 2015, You have been in continuous violation of the 2015 Industrial Stormwater Permit's requirements to develop and implement an adequate MRP. WQO-2014-0057-DWQ § XI. You will continue to be in violation every day that You fail to develop and implement an adequate MRP for the Facility.

As also discussed above, You have not submitted accurate and complete Annual Reports and reports of Your noncompliance with the 1997 and 2015 Industrial Stormwater Permits. Therefore, for each Annual Report due from April 17, 1997 to June 30, 2015, You were in violation of the 1997 Industrial Stormwater Permit's requirements to submit accurate and complete Annual Reports every day since each of Your Annual Reports were due. WQO-97-03-DWQ § B.14. Between March 26, 1992 and April 17, 1997, You were in continuous violation of the same requirement in the 1991/1992 Industrial Stormwter Permit. Further, for each Annual Report due since July 1, 2015, You were in violation of the 2015 Industrial Stormwater Permit's requirement's to submit accurate and complete Annual Reports every day since each of Your Annual Reports were due. WQO-2014-0057-DWQ § XVI.

You are subject to civil penalties for each day of each of all Your violations of the 1997 and 2015 Industrial Stormwater Permits and the CWA identified in this letter occurring within the past five (5) years.

III. PERSONS RESPONSIBLE FOR THE VIOLATIONS

Schmidbauer Lumber, Inc., Del Clark, Schmidbauer Building Supply, LLC, FKS Investment Co., LLC, and George Schmidbauer are the persons responsible for the violations at the Facility described above.

IV. NAME AND ADDRESS OF NOTICING PARTY

Our name, address, and telephone number is as follows:

Ecological Rights Foundation
867 B Redwood Drive
Garberville, CA 9542
(707) 923-4372

V. COUNSEL

ERF has retained legal counsel to represent it in this matter. Please direct all communications to:

Fredric Evenson Ecology Law Center P.O. Box 1000 Santa Cruz, CA 95061 (831) 454-8216 Email: evenson@ecologylaw.com	Jodene Isaacs Christopher Sproul Environmental Advocates 5135 Anza Street San Francisco, CA 94121 (415) 533-3376 email: jisaacs@enviroadvocates.com csproul@enviroadvocates.com

VI. REMEDIES

ERF will seek injunctive and declaratory relief preventing further CWA violations pursuant to CWA §§ 505(a) and (d), 33 U.S.C. §§ 1365(a) and (d), and such other relief as permitted by law. In addition, ERF will seek civil penalties pursuant to CWA§ 309(d), 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4, against each defendant in this action of up to $32,500 for all violations on or after March 15, 2004. *See* 69 Fed. Reg. 7121 (Feb. 13, 2004). ERF will also seek to recover costs and attorneys' fees in accord with CWA § 505(d), 33 U.S.C. § 1365(d).

ERF believes this Notice of Violations and Intent to Sue sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA § 505(a) against You for the above-referenced violations. During the 60-day notice period, we are willing to discuss effective remedies for the violations noted in this letter. If You wish to pursue such discussions in the absence of litigation, we suggest that You initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Jodene Isaacs
Counsel for Ecological Rights Foundation

ADDITIONAL SERVICE LIST – FEDERAL & STATE AGENCIES

Gina McCarthy, Administrator U.S. Environmental Protection Agency Ariel Rios Building 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460	Eric Holder, U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-0001
Jared Blumenfeld, Regional Administrator U.S. Environmental Protection Agency Region IX 75 Hawthorne Street San Francisco, California 94105	Thomas Howard Executive Director State Water Resources Control Board P.O. Box 100 Sacramento, California 95812-0100
Matthias St. John, Executive Officer Regional Water Quality Control Board Region 1 5550 Skylane Blvd., Suite A Santa Rosa, CA 95403	